the evidence as corroboration. The learned trial judge said:

"... Whether that is corroboration or is not, you have the evidence of the elder brother that the accused on that night was out looking for his mother. He had testified that the accused cycled past his house three times earlier and finally questioned him as to the whereabout of his mother. He was told that his mother was out gambling..."

Having said that he proceeded to invite the jury to make certain assumptions saying:

"... You may assume that the accused would know where this gambling house would be because he had known the mother well and had been to her house many times. So he probably knew which road the woman would take when coming back from Irving Road to her house in Malacca Street. It may be he was lying in wait for this woman..."

In our view such an assumption is unreasonable as it is highly prejudicial. The fact that the appellant was looking for the deceased some four hours before she was killed need not necessarily suggest that he had any criminal intention towards her. There was no evidence of a quarrel between him and the deceased. On the other hand there was evidence that he had been to her house and had his meals there. There was absolutely no basis for the assumption. It would seem plain to us that there was nothing which could corroborate the younger boy's evidence. Be that as it may the learned trial judge seemed to have thought otherwise when he said this to the jury:

"... Testing again whether his story is true, whether it was the accused who stabbed his mother, you will have to bear in mind the evidence of his brother (PW. 4) who said he saw the accused come to the house asking for his mother. That would tend, gentlemen, would it not, to lead you to the conclusion that there is truth in the story of this boy..."

We are of the view that this is a serious misdirection which is fatal to the conviction.

One point, perhaps, requires observation: though the evidence of P.W. 4 was sworn evidence, he was nevertheless a young person and in our opinion the jury should have been warned of the risk of accepting his evidence. As Lord Goddard C.J. in *Reg.* v. *Campbell*[4] said:

"... The sworn evidence of a child need not as a matter of law be corroborated, but a jury should be warned not that they must find corroboration, but that there is a risk in acting on the uncorroborated evidence of young boys or girls, though they may do so if convinced that the witness is telling the truth, and this warning should also be given where a young boy or girl is called to corroborate the evidence either of another child, sworn or unsworn, or of an adult."

We have refused a request for a retrial because we could find no ground for it.

Appeal allowed.

Solicitors: *R. Rajasingam & Co.*

CHELLAPPAH RASADURAI v. SELVADURAI

[F.C. (Azmi L.P., Suffian & Ali F.JJ.) July 7, 1971]

[Malacca — Federal Court Civil Appeal No. 7 of 1971]

Moneylenders — Loan in consideration of larger sum being paid — Whether amounts to moneylending within meaning of the Ordinance — Presumption — Onus on lender to rebut presumption — Moneylenders Ordinance, 1951, ss. 2, 3, 15 & 16.

The plaintiff/respondent claimed repayment of principal and interest on money lent to the defendant/appellant. By way of security, he obtained a charge over an interest in land held by the defendant/appellant. The defendant/appellant relied on sections 15 and 16 of the Moneylenders Ordinance, 1951. He alleged that the contract for the repayment of the loan was void and unenforceable, and counterclaimed for a declaration that the charge was also void and unenforceable. There was evidence that the plaintiff had lent money to the defendant/appellant and other persons in consideration of a larger sum being repaid. By section 3, "any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a moneylender."

The primary issue was whether the plaintiff/respondent was a moneylender within the meaning of the Moneylenders Ordinance? If he was then his claim would fail, it being conceded that he had no licence. The learned trial judge held that he was not a moneylender. The defendant appealed.

Held, allowing the appeal: on the plaintiff/respondent's own pleadings, it was clear that he had on two occasions lent money to the defendant/appellant in consideration of a larger sum being repaid, and therefore the statutory presumption under section 3 arose against him. There was no rebutting evidence in this case except a denial by the respondent that he was a moneylender. A mere denial is not enough. In the circumstances, the learned trial judge should have held that the plaintiff/respondent had not rebutted the presumption that he was a moneylender and that therefore the plaintiff/respondent's claim should have been dismissed.

Cases referred to:-

(1) *Chow Yoong Hong* v. *Choong Fah Rubber Manufactory* [1962] M.L.J. 74 at p. 77, P.C.

(2) *Baju Ria* v. *Liau Kim Lian* [1965] 1 M.L.J. 128.

FEDERAL COURT.

Edgar Joseph for the appellant.

Atma Singh Gill for the respondent.

Cur. Adv. Vult.

Suffian F.J.: On 31st October, 1960, the plaintiff lent the defendant $15,500. By way of security he obtained a charge over an interest in land held by the defendant. The plaintiff was to be repaid the loan on 30th April, 1961. The defendant did not repay it.

On a subsequent occasion the plaintiff lent the defendant $4,000.

The plaintiff alleged, and the defendant admitted, that interest was payable on the two loans.

The learned trial judge held that evidence relating to the payment of interest on the loans was not admissible. Before us counsel for the defendant conceded that it was admissible, and so there is no need for us to say whether the learned trial judge was right or wrong.

The plaintiff in the suit in the court below claimed the amount lent in the first loan (the second loan having been repaid in full), and also compensation for non-payment of interest as from 1st August, 1962.

The defendant relied on sections 15 and 16 of the Moneylenders Ordinance No. 42 of 1951. He said that the contract for the repayment of the loan was void and unenforceable, and counterclaimed for a declaration that the charge was also void and unenforceable.

Thus the primary issue in this case was this: was the plaintiff a moneylender within the meaning of that law? If he was, then his claim must fail, it being conceded that he had no licence.

The learned trial judge held that he was not a moneylender and gave judgment for him. The defendant has appealed to us.

A moneylender is defined by the Ordinance (section 2) as including "every person whose business is that of moneylending or who carries on... that business". Thus without more in the Ordinance it would have been for the defendant to prove that the plaintiff was a moneylender. But there is more in the Ordinance — section 3. That section provides that "any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a moneylender".

The effect of these two sections has been explained by the Privy Council in *Chow Yoong Hong* v. *Choong Fah Rubber Manufactory*.[1]

In the instant case on the plaintiff's own pleadings alone it is clear that he had on two occasions lent money to the defendant in consideration of a larger sum being paid, and therefore the statutory presumption under section 3 arose against him. The defendant was not, however, content to rely on the presumption alone. During the trial he tried to show that the plaintiff was carrying on the business of moneylending. He alleged that the plaintiff had lent money to four different persons: to Nagalingam, to Thambiah, to Maniam and to Moorthy (D.W. 3). These transactions were put to the plaintiff in cross-examination.

The plaintiff denied the first two. There was no finding by the learned trial judge on them, probably because neither Nagalingam nor Thambiah was called by the defence to give evidence.

As to the third transaction, at first the plaintiff denied it, but subsequently he admitted it, but claimed that though it was he who had lent the money, in fact it was his brother's money that was being lent. The learned judge found as a fact that the plaintiff had lent money to Maniam, but did not say whether or not he had lent his brother's money.

As to the fourth transaction, that too was denied by the plaintiff, and so the defendant called Moorthy to contradict the plaintiff. Moorthy (D.W. 3) said that he had twice borrowed from his uncle, but the money came from the plaintiff. The uncle was not called, the explanation being that he was in India. Here again unfortunately there was no definite finding of fact by the learned trial judge who merely said that even if he were to act on the evidence there seemed to be a lack of continuity in the transactions.

What did the plaintiff himself do to rebut the presumption that he was a moneylender? Before the trial he said in answer to the defendant's interrogatories that he had lent money to nobody else, only to the defendant on the two occasions mentioned in the plaintiff's statement of claim. During the trial he denied in evidence that he had ever lent money to anybody except twice to the defendant, and once to Maniam, but he said that on the latter occasion "the money I loaned... belonged to my brother but I used my name as lender."

Both counsel before us agree that the learned trial judge was aware of the law relating to proof. I agree that he knew that once the statutory presumption arose against the plaintiff, it was for him to rebut the presumption that he was a moneylender.

But Mr. Joseph for the defendant argues that the learned trial judge though aware of the law has misapplied it. With respect, I agree. The words underlined above by which the plaintiff admitted that he used his own name as lender when lending his brother's money to Maniam, far from dislodging the presumption against him, went some way towards strengthening the defence allegation that he was a moneylender.

In the circumstances, I am of the opinion that the learned trial judge should have held that the plaintiff had not rebutted the presumption that he was a moneylender and that therefore the plaintiff's claim should have been dismissed.

As to the counterclaim, it being admitted by the plaintiff that there was interest payable on this loan, and there being a factual finding by the learned trial judge that this interest nowhere appeared in the charge, that should have been allowed by the learned trial judge.

I would therefore allow this appeal with costs.

Ali F.J.: I agree with my brother Suffian F.J. that we should allow this appeal for the reasons stated in his judgment.

I wish to add a few words. The basis of the trial court's decision was that the appellant has failed to prove that the respondent was a moneylender within the meaning of section 2 of the Moneylenders Ordinance 1951. On the evidence adduced by the appellant for the purpose of that section, the learned trial judge was entitled to the view that it was insufficient to show continuity. But the appellant was not only relying on section 2. He said in his defence he was also relying on section 3. In this connection two instances of moneylending at interest to the appellant have clearly been admitted in the respondent's pleadings. Another instance admitted by the respondent at the trial was the loan of $10,000 at interest to one Maniam. According to the authorities, one single loan at interest would be sufficient to raise the presumption under section 3. The presumption, as pointed out by Lord Devlin in *Chow Yoong Hong* v. *Choong Fah Rubber Manufactory*[1] is that —

"... in the absence of rebutting evidence, that there were sufficient other transactions of a similar sort to amount to a carrying on of business."

There was no rebutting evidence in this case except a denial by the respondent that he was a moneylender. A mere denial is not enough.

It would be dangerous to attempt to formulate the kind of evidence which can be regarded as sufficient. This must depend on the facts of each particular case. It is for the trial court to consider and decide for itself whether the evidence by the party giving the loans has sufficiently rebutted the presumption as in the case of *Baju Ria* v. *Liau Kim Lian.*(2) In the consideration of such evidence for the purpose of section 3 system and continuity would hardly be relevant. They would be if it falls on the borrower to prove positively that the party lending the money is a moneylender for the purpose of section 2.

Azmi L.P.: I concur. The appeal is therefore allowed with costs. It is further ordered that the discharge of the charge be signed by the respondent within one week from the date of the service of this order on him, failing which the assistant registrar of the High Court at Seremban be authorised to sign the discharge of the charge for the respondent.

That the memorial of the said charge be cancelled both on the original document of title with the registrar and also on the issue document of title relating to the charge.

That the issue document of title now in the possession of the respondent be returned to the appellant.

The deposit of $500 be returned to the appellant.

Appeal allowed.

Solicitors: *Joseph & Son; Atma Singh Gill & Co.*

LIONEL v. GOVERNMENT OF MALAYSIA

[F.C. (Ong C.J. (Malaya), Gill & Ali F.JJ.) July 9, 1971]

[Johore Bahru — Federal Court Civil Appeal No. 3 of 1971]

Administrative Law — Declaration — Public Servant — Dismissal of by Chief Police Officer after disciplinary action under General Orders, chapter D, reg. 32, for acts of alleged indiscipline — No delegation of powers by Public Services Commission — Whether dismissal void.

Constitutional Law — Civil Service — Dismissal — Protection of civil servants — Federal Constitution, arts. 4, 135, 139(1), 144(6), 160(1), Part X.

In 1953 the appellant was appointed as a temporary clerk-interpreter in the Kelantan Police Contingent. In 1958 he was transferred to Contingent Police Headquarters in Johore Bahru. In 1962 disciplinary action was taken against him by the Chief Police Officer, Johore, under regulation 32 of the General Orders, Chapter D, for acts of alleged indiscipline. His explanations were not accepted and by letter dated May 29, 1962, the Chief Police Officer informed him, in effect, that he had failed to exculpate himself and that it had been decided to terminate his services as a temporary clerk. The appellant appealed to the Public Services Commission for reconsideration of his case but his appeal was dismissed. He therefore sought a declaration that his purported dismissal by the Chief Police Officer was void, inoperative and of no effect.

Held, allowing the appeal: the authority which had power to dismiss the appellant was the Public Services Commission who had not delegated the power and the act of the Chief Police Officer in this case was clearly contrary to the Constitution and therefore void.

Case referred to:-

(1) *Surinder Singh Kanda* v. *Government of the Federation of Malaya* [1962] M.L.J. 169, 171-172.

FEDERAL COURT.

P. K. Nathan for the appellant.

Ajaib Singh (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Ong C.J. (Malaya): The facts of this case are not in dispute. On October 1, 1953 the appellant was appointed as temporary clerk-interpreter in the Kelantan Police Contingent, subject to probation for a period of 6 months. He was liable, as long as he remained in the Public Service, to be employed in any part of the Federation of Malaya. In 1958 he was transferred to Contingent Police Headquarters in Johore Bahru. On April 30, 1962 disciplinary action under regulation 32 of General Orders, Chapter D, was taken against him by the Chief Police Officer, Johore, for acts of alleged indiscipline. He was informed of the charges by letter which required him to exculpate himself within 14 days His explanations were not accepted by the Chief Police Officer who on May 29, 1962 conveyed his decision to the appellant in these terms: —

"With reference to my letter to you (SR) PF/3596 dated 30th April, 1962, and to your reply thereto dated 8th May, 1962, I have to inform you that, after careful consideration of your representations, I have decided that you have failed to exculpate yourself.

2. I have, therefore, decided to terminate your services as a Temporary Clerk with effect from 1st June, 1962, on payment to you of one month's salarly plus cost of living allowance in lieu of notice."

On June 10, 1962 the appellant wrote to the Public Services Commission appealing for reconsideration of his case with a view to reinstatement. His appeal was dismissed. On March 12, 1966 he commenced action, seeking a declaration that his purported dismissal by the Chief Police Officer on June 1. 1962 was void, inoperative and of no effect and that he continued to be a member of the police clerical service, entitled to all emoluments accrued since the date of his dismissal.

The appellant's case was that, as a member of the public service, his purported dismissal by the Chief Police Officer, an authority subordinate in rank to the Public Services Commission, was contrary to clause (1) of article 135 of the Constitution. The Government in its defence admitted that the appellant was a member of the police clerical service, but pleaded that one of the terms of his employment was that his services were terminable by one month's notice, or on payment of one month's salary in lieu of notice, and his services were merely terminated in accordance therewith.

The learned trial judge was of opinion that, by reason of the letter of the Chief Police Officer having expressly stated that the appellant's services were terminated and also the payment to him of one month's salary plus cost of living allowance, the Chief Police Officer's decision was taken probably to save him from the ignominy of a dismissal and in accordance with the conditions of his appointment which he had agreed